

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7633

Petition of Southern Vermont Cable Company ("Southern)
Vermont") to renew its Certificate of Public Good for a cable)
television system located in the Towns of Newfane, Putney,)
Dummerston, Townshend, Brattleboro, Brookline, Dover,)
Jamaica, Marlboro, Wardsboro, and Westminster for a period)
of eleven years)

Order entered: 1/28/2011

PROCEDURAL ORDER

This docket was initiated by a petition by Southern Vermont Cable Company ("Southern Vermont") to renew its Certificate of Public Good for a cable television system filed on July 9, 2010. At the time of filing Southern Vermont acknowledged that its Certificate of Public Good was due to expire before any proceeding to renew it could be concluded, and on July 13 the Public Service Board ("Board") issued an extension until January 31, 2011. At the time this seemed like more than adequate time to complete the review. A prehearing conference was held on July 29, and a public hearing on September 16.

However, at a status conference held on November 17, the parties discussed Southern Vermont's intention¹ to be exempted from the technical provisions of Board Rule 8.400² pursuant to Rule 8.410:

8.410 Exception for Small Cable Systems

The operator of a cable television system with annual gross receipts from 'cable services' of two million dollars or less may be excused from the provisions of Rule 8.400 if said company can demonstrate that it is meeting the cable related community needs and interests of its service territory. For the purpose of this subsection, 'cable services' has the definition stated in 47 U.S.C. § 522.

1. Incorporated into a Motion to Amend Its Petition, filed December 17, 2010.
2. Rule 8.400 *et seq.* define the respective rights and responsibilities of cable operators and of Public, Educational, and Governmental Access providers.

Southern Vermont also asked that the Board limit the participation in this docket by Brattleboro Community Television ("BCTV"), which was granted party status early in the proceedings. BCTV is the Access Management Organization ("AMO") that serves the Comcast cable system immediately south of the Southern Vermont service area, and has provided the signal from one of its channels to Southern Vermont for the past ten years.

Further, Southern Vermont has now filed an Amendment to its Petition, as well as a new proposal for meeting the needs of its served communities for Public, Educational, and Governmental ("PEG") Access. Southern Vermont has proposed a revised schedule, to which the Vermont Department of Public Service ("Department") consented.

BCTV has vigorously opposed all of Southern Vermont's motions. However, BCTV's pleading was not filed at the Board until January 7, 2011; Southern Vermont's response to that pleading was filed on January 21.

As a result of Southern Vermont's amendment, which materially changed the scope of this proceeding, this case can not be resolved prior to the January 31 expiration of Southern Vermont's Certificate of Public Good. However, it would not be in the public interest for Southern Vermont to cease providing service to its customers. Therefore, I have little choice but to recommend that the Board grant a further extension³ of the Certificate of Public Good, and to set out a new schedule, which appears below. This new schedule should provide sufficient time to carefully examine the issues associated with Southern Vermont's request for an exception under Rule 8.410 and the allegations in BCTV's pleadings regarding Southern Vermont's PEG Access operations.⁴

I do not agree with Southern Vermont that BCTV's participation ought to be limited further (it intervened only on PEG Access issues). Southern Vermont argues that BCTV (1) does not have an interest in whether Southern Vermont obtains an exemption under Rule 8.410; (2) that BCTV can protect its rights in other ways; and (3) that BCTV is adequately represented by the Department. However, (1) BCTV will certainly have relevant things to say about how to

3. The extension is granted in a separate Order by the Board, also issued today.

4. There is some dispute, in the pleadings, over to just what extent BCTV served, or was paid to serve, the Southern Vermont service area.

provide PEG Access services; (2) Southern Vermont does not suggest what other forum would serve BCTV in protecting its interests in this matter; and (3) the Department, while representing the interests of Vermont and its people in general, is certainly not charged with representing the interests of BCTV in particular. Southern Vermont's request is therefore denied.

I have, in general, adopted the petitioner's proposed schedule below. However, it should be clear that the petitioner's testimony in support of its amended petition should contain an actual plan for how it intends to meet "the cable related community needs and interests of its service territory," not merely an expression of an intent to formulate a plan in the future. That was the scheme adopted in the now-expiring Certificate of Public Good⁵ and it does not seem, from the pleadings and from the comments at the public hearing, that it has produced a satisfactory result. Further, the interest of the members of the service territory in more and better PEG Access was loud and clear. Not only does a concrete plan need to be in place, but I will reverse my comment at the status conference; clearly, another public hearing must be held after the petitioner has filed its plan.

The Board's July 13, 2010, Order opening this proceeding noted the Board's displeasure with the fact that Southern Vermont filed its petition to renew the Certificate of Public Good just four days before it was due to expire. The fact that Southern Vermont then waited four months into its six-month extension to inform the Board and the parties that it planned to provide PEG Access in a different manner in the future, a decision which will require exploration of entirely new regulatory territory, is not an improvement. Nonetheless, I recommend that the Board extend the Certificate of Public Good of Southern Vermont to July 31, 2011.

5. Condition 4 of the Certificate of Public Good issued 7/13/99 states:

Southern Vermont shall make reasonable efforts to encourage the creation of a Public Access Administrative Entity within its service territory. Such reasonable efforts shall include community outreach by Southern Vermont staff or persons designated by Southern Vermont for this purpose to inform the community about the opportunity for public access, information on how to form an administrative entity, and technical assistance.

Schedule

February 18, 2011	Petitioner files testimony in support of Amended Petition, including proposed Access plan
week of March 7	Public hearing
March 25	Prefiled testimony by DPS and BCTV
week of April 18	Technical hearing
June 3	Briefs
June 17	Reply briefs

SO ORDERED.

Dated at Montpelier, Vermont, this 28th day of January, 2011.

s/ John P. Bentley

John P. Bentley, Esq.
Hearing Officer

OFFICE OF THE CLERK

FILED: January 28, 2011

ATTEST: s/ Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)